REMARKS

I. Preliminary Remarks

This paper is presented in response to the final office action dated June 12, 2008, in which all pending claims (25-27, 29, and 31-41) were rejected, and is accompanied by a request for continued examination, a two-month extension petition, and the requisite fees.

II. Outstanding Rejections

Claims 25-27, 29, and 31-41 have been rejected under 35 U.S.C. § 103(a) as obvious over Policappelli et al., U.S. Patent No. 5,612,039 ("Policappelli") in view of Lowestein, U.S. Patent No. 3,764,692 ("Lowenstein").

Claims 25-27, 29, and 31-41 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 2, 6, 10, 11, and 13-36 of copending Application No. 11/209,429.

III. Patentability Arguments

A. The rejections under 35 USC §103 in view of Policappelli and Lowenstein should be withdrawn

The rejection of all pending claims under 35 U.S.C. §103(a) should be withdrawn because the mixed cation salt of hydroxycitric acid ("HCA") is not obvious in light of the references. The references, Lowenstein and Policappelli, do not teach or suggest all the claim limitations. Each reference teaches single cation salts of HCA. Policappelli merely recites a calcium salt of HCA. Policappelli at col. 5, lines 66-67. Lowenstein merely recites various single cation salts of HCA. Lowenstein at col. 2, lines 1-8. Neither discloses or suggests a double or triple mixed salt of HCA. Although the action on page 6 states that formation of a double or triple salt is inherent, neither Lowenstein or Policappelli disclose mixed cation salts of HCA. There is no mixing of sodium, calcium, or potassium hydroxide in Lowenstein or Policappelli. For example, in Example 6 of Lowenstein, garcinia acid lactone was added to liquid ammonia to form a garcinia acid lactone mono ammonium salt.

Additionally, secondary considerations, such as unexpected results, must be considered when discussing obviousness. The action states that "the claimed properties would have been present once the composition was employed in its intended use." Action at

p. 7. However, the claimed properties of high solubility and low hygroscopicity were not present in the compounds disclosed in Lowenstein and Policappelli. The present invention of the mixed cation salt of HCA produces unexpected results. The mixed cation salt of HCA has better solubility, hygroscopicity, and palatability properties than the single cation salts disclosed in the prior art. Each single cation salt of HCA is problematic for use in dietary supplements. Calcium salt of HCA, which is disclosed in Policappelli, has poor solubility, reducing bioavailability. Potassium salt of HCA, which is disclosed in Lowenstein, is highly hygroscopic, reducing shelf life. There is no indication in the prior art that mixed cation salts of HCA have high solubility and low hygroscopicity. Therefore, the unexpected properties, increased bioavailability and minimal hygroscopicity, of the mixed cation salt of HCA demonstrates that the combination is not obvious.

Finally, this combination of salts leads to better bioavailability and shelf life for dietary supplements, a true improvement in the area of dietary supplements. Therefore, it is submitted that this rejection can be withdrawn.

B. The provisional rejection under the judicially created obviousness-type double patenting should be deferred

Because this is a provisional rejection, applicants will address these rejections if and when they mature.

CONCLUSION

For the foregoing reasons, it is submitted that each of claims 25-27, 29, and 31-41 should now be allowed. Should the Examiner wish to discuss any issues of form or substance, he is invited to contact the undersigned attorney at the number below.

Dated: November 12, 2008

Respectfully submitted,

By _____
Jeffrey S. Sharp
Registration No.: 31,879
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicant